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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 547

GEORGE S. MAY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
(JOHN S. BOYLE, STATE'S ATTORNEY

Respondent).

PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

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Chicago, Illinois.

The Scheffer Press, Inc.—ANdover 3-6850

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1. The Supreme Court of Illinois declared the order of the Criminal Court of Cook County was not reviewable under laws of Illinois, and that it had no jurisdiction, therefore the Criminal Court of Cook County, Illinois, is the highest court of the state within the purview of Subsection 3 of Section 1257 of Title 28 U.S.C.A., so this petition for a writ of certiorari is of necessity directed to that court 11

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II, III. The Supreme Court of Illinois for many years has treated Section 6, of Article 11 of the Illinois Constitution and the Fourth Amendment to the United States Constitution as identical and has cited them together. For almost thirty years the decisions of the court have prohibited the use of improperly seized evidence in a criminal matter. Since 1931, by legislative act the use of illegally seized evidence other than its destruction or return has been a crime 11-13

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No.

GEORGE S. MAY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
(JOHN S. BOYLE, STATE'S ATTORNEY

Respondent).

PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, ILLINOIS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, George S. May, respectfully represents and shows unto the Court as follows:

That on the 17th day of July, 1950, the petitioner George S. May filed, before the Chief Justice of the Criminal Court of Cook County, Illinois, a verified petition to suppress before the Grand Jury, (Tr. 2) as evidence, certain articles of personal property, which it is alleged therein had been seized by an investigator for the State's Attorney of Cook County, and several police officers of the City of Chicago, (Tr. 3, 5) who obtained admission to a private club by stealth and subterfuge, (Tr. 4) without any search warrant and without any warrant for the

arrest of any person, at a time when they were not in pursuit of anyone for the purpose of arrest. (Tr. 4) The said articles of personal property were taken from the premises of a private incorporated club, (Tr. 2-3) to which only members were admitted, (Tr. 3), and of which club the petitioner was a member and director, and as such director had joint control with four other directors, (Tr. 2) of the articles of personal property seized; and that by the seizure of the said articles, petitioner's rights, as guaranteed by Section I of the Fourteenth Amendment to the Constitution of the United States, (Tr. 7) and as guaranteed by Section 6 of Article 2 of the Constitution of the State of Illinois, (Tr. 6) had been violated; and that the State's Attorney of Cook County intended to, and was about to present said articles of personal property and the testimony of witnesses whose names were obtained from memoranda illegally seized, to the Grand Jury of the Criminal Court of Cook County, Illinois, for the purpose of procuring an indictment against petitioner. (Tr. 5) No indictment had been returned against petitioner.

The petitioner then and there moved the court to enter a rule on the State's Attorney of Cook County to answer the said petition (Tr. 9) which was denied. (Tr. 9, 10)

The court after argument of counsel at said time denied the petition to suppress said articles of evidence and dismissed the petition without any issue of fact being joined thereon, without any answer to or denial of the facts set out in the petition and without hearing any evidence. (Tr. 10).

The petitioner thereupon appealed the said order to the Supreme Court of the State of Illinois. (Tr. 11-12).

On the 23rd day of September, 1950, the respondent filed a motion to dismiss said appeal. (Tr. 12).

The Supreme Court of Illinois dismissed said appeal on the 25th day of September, 1950 (Tr. 12-13) and filed

"Memorandum Dismissing Appeal—September 25, 1950."

"And now, on this day, the Court having duly considered the motion filed by appellee on September 23, 1950, to dismiss appeal or in the alternative, that a reasonable time be fixed for filing briefs, and being now fully advised of and concerning the premises, the motion to dismiss is hereby allowed; it appearing from an examination of the record that appellant has attempted to appeal from the denial of a petition to suppress evidence claimed to have been unlawfully seized and to return the same to appellant. The record does not disclose any case, civil or criminal, in which the motion would apply and it is not a civil action for the recovery of the property seized or the value thereof. The legality of the trial court's action can be determined in a civil action for the recovery of the property or in a criminal cause if the property seized is attempted to be used therein. Our jurisdiction depends upon whether the case presented to us comes within those kinds designated by Section 75 of the Civil Practice Act. No such action is shown to be pending in the trial court from which an appeal or writ of error may be prosecuted. We therefore have no jurisdiction. We further call attention to the fact that the people have made no appearance within the time fixed by Rule 41 and ordinarily this motion could not be considered on the same day the cause is set for oral argument in this court, but lack of jurisdiction appearing from the record, it is our duty to dismiss, which is accordingly done."

On the 13th day of October, 1950, petitioner filed in the Supreme Court of Illinois, a "Motion to reconsider cause and set aside the order of dismissal." (Tr. 13).

The Supreme Court of Illinois denied said motion on the 14th day of November, 1950. (Tr. 13).

Jurisdiction.

The jurisdiction of this Court is invoked pursuant to sub-section three (3) of section 1257, of Title 28 of the United States Code Annotated, by which jurisdiction is conferred to review by certiorari, the final judgments of the highest courts of states, in causes, in which rights have been asserted under the Constitution of the United States, and denied; the petitioner having asserted in the petition filed by him in the Criminal Court of Cook County rights claimed under section 1 of the Fourteenth Amendment to the Constitution of the United States (Tr. 7), and that court having dismissed said petition, (Tr. 12) and the Supreme Court of Illinois, having dismissed an appeal from said order (Tr. 12-13), upon the ground that said order was not reviewable in the courts of review of Illinois (Tr. 12); said order of the Criminal Court of Cook County was therefore a final order of said Court, reviewable by this Court within the purview of subsection three (3) of section 1257 of Title 28 of the United States Code Annotated.

The Question Presented Is:

Does the action of a state court, in allowing the use as evidence of property illegally seized by officers of the state, in a criminal proceeding against the person from whom it was seized, constitute a denial of the equal protection of the laws of said state, within the purview of section one (1) of the Fourteenth Amendment to the Constitution of the United States; if the highest court of such state has uniformly held (as shown in the annexed brief), that such a seizure was in violation of a constitutional provision of such state and that property so seized could not be used in any criminal procedure against the person from whom it was seized?

Reasons Relied Upon for the Allowance of Writ of Certiorari.

First, That the Criminal Court of Cook County, Illinois, in deciding said question determined a Federal question of substance that has not heretofore been explicitly determined by this Court.

Second, That the Criminal Court of Cook County, decided said question in a way that appears to be in conflict with the principles declared in applicable decisions of this Court.

Specification of Errors Relied Upon.

First: The Criminal Court of Cook County, Illinois, erred in holding that by the seizure of the articles in question by an officer of the State of Illinois in the manner set forth in the petition filed by the petitioner in said Court, that petitioner was not deprived of the equal protection of the laws of the State of Illinois, guaranteed by section one (1) of the Fourteenth Amendment to the Constitution of the United States.

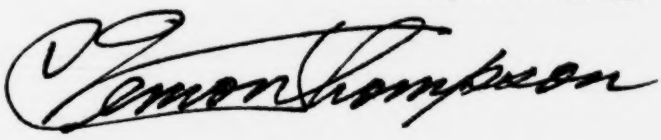
Second: The Criminal Court of Cook County, Illinois, erred in holding that the use as evidence for the purpose of obtaining an indictment against petitioner, of the property in question, seized in the manner set forth in said petition, would not deprive petitioner of the equal protection of the laws of the State of Illinois guaranteed by section one (1) of the Fourteenth Amendment to the Constitution of the United States.

Third: That the Criminal Court of Cook County, Illinois, erred in dismissing the petition filed by the petitioner in said Court, to suppress as evidence the use of the property in question before the Grand Jury of Cook County, Illinois, for the purpose of obtaining an indictment against petitioner.

Fourth: That the Criminal Court of Cook County, Illinois, erred in dismissing said petition without requiring an issue of fact to be joined thereon, and without according petitioner a hearing in the matter.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Criminal Court of Cook County, Illinois, and commanding that court to certify and to send to this Court for its review and determination, on a day certain to be specified therein, a full and complete transcript of the record and all proceedings in the matter numbered and entitled on its docket "*The People of the State of Illinois* v. *George S. May,* Grand Jury No. 96, July Term, 1950, in the Matter of Grand Jury Investigation", and that the order entered by the Criminal Court of Cook County, Illinois, on the 17th day of July, 1950, dismissing the petition filed by petitioner in said matter to suppress, the use, as evidence before said Grand Jury certain property, be reversed by this Honorable Court and your petitioner have such further relief as this Honorable Court may deem meet and just; and your petitioner will ever pray.

GEORGE S. MAY, *Petitioner,*
By C. VERNON THOMPSON,
Attorney for Petitioner.



BRIEF AND ARGUMENT FOR PETITIONER.
PROPOSITIONS OF LAW RELIED UPON.

I.

The Supreme Court of Illinois having decided that the order in question entered by the Criminal Court of Cook County, Illinois, was not reviewable, and having dismissed the appeal taken to the Supreme Court of Illinois from said order; this Petition for a Writ of Certiorari to obtain a review of said order is properly addressed to the Criminal Court of Cook County, Illinois.

Western Union Telegraph Company v. *Hughes,* 203 U. S. 505, 506-507; 27 S. Ct. 162, 163; 51 L. Ed. 294, 295.

Marino v. *Ragen,* 332 U. S. 561; 68 S. Ct. 240, 241, 92 L. Ed. 170, 172.

Grovey v. *Townsend,* 295 U. S. 45, 47; 55 S. Ct. 622, 79 L. Ed. 1292, 1293.

II.

It is provided by Section Six (6) of Article Two (2) of the Constitution of Illinois, as follows:

> **"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."**

Such Constitutional provision has been uniformly construed by the Supreme Court of Illinois for almost thirty (30) years, as prohibiting the use, as evidence, in any criminal proceeding, of any property seized by an officer of the State of Illinois in violation of said Constitutional provision.

The People v. *Brocamp,* 307 Ill. 448, 452-456; 138 N.E. 728, 730-732.

The People v. *Castree,* 311 Ill. 392; 143 N.E. 112.
The People v. *Elias,* 316 Ill. 376; 147 N.E. 472.
The People v. *Brooks,* 340 Ill. 74; 172 N.E. 29.
The People v. *Sovetsky,* 343 Ill. 583, 589; 175 N.E. 844.
The People v. *Dent,* 371 Ill. 33; 19 N.E. 2nd 588.
The People v. *Dalpe,* 371 Ill. 607, 611; 21 N.E. 2nd 756.
The People v. *Henneman,* 373 Ill. 603, 606; 27 N.E. 2nd 448.
The People v. *Martin,* 382 Ill. 192, 196, 200-201; 46 N.E. 2nd 997.
The People v. *Schmoll,* 383 Ill. 280, 283; 48 N.E. 2nd 933.
The People v. *Grod,* 385 Ill. 584, 586, 588-591; 53 N.E. 2nd 591.

III.

It is also provided by Sec. 456-A of Chapter 38 of the Illinois Revised Statutes of 1949 (enacted in the year 1931) as follows:

"No sheriff, coroner, constable, police officer or other officer of the law shall make disposition of any property, illegally seized and held by the officer otherwise than by returning the property to its legal owner or by destroying it or disposing of it according to the laws of the State of Illinois. Any officer of the law violating the provisions of this section is guilty of a misdemeanor and subject to a fine of not less than $100.00 nor more than $500.00, or by imprisonment in the county jail not less than one month nor more than six months or both such fine and imprisonment."

IV.

The order of the Criminal Court of Cook County, Illinois, denying the petitioner a hearing on the petition presented by him to suppress the articles and property illegally seized and denying the motion of petitioner for a rule upon the State's Attorney of Cook County, Illinois, to answer the same, (Tr. 9-10), deprived the petitioner of equal protection of the law as guaranteed by Section One (1) of the Fourteenth Amendment to the Constitution of the United States, for the reason that the Supreme Court of Illinois having uniformly construed Section 6 of Article 2 of the Constitution of Illinois, as prohibiting the use as evidence in any criminal proceeding, of property illegally seized by any officer of the State of Illinois, this petitioner was denied rights that were accorded to other citizens of the State of Illinois in similar situations.

Cochran v. *Kansas,* 316 U. S. 255, 257; 86 L. Ed. 1453; 62 S. Ct. 1068.

Skinner v. *Oklahoma,* 316 U. S. 535, 538-542; 86 L. Ed. 1655; 62 S. Ct. 1110.

Hysler v. *Florida,* 315 U. S. 411, 422; 86 L. Ed. 932; 62 S. Ct. 688.

McCabe v. *A.T.S.F. Ry. Co.,* 235 U. S. 151; 59 L. Ed. 169; 35 S. Ct. 6.

Yick Wo v. *Hopkins,* 118 U. S. 356, 373-374; 30 L. Ed. 220; 6 S. Ct. 1064.

Truax v. *Corrigan,* 257 U. S. 312, 332-333; 66 L. Ed. 254; 42 S. Ct. 124.

Durkin v. *Hey,* 376 Ill. 292, 300; 33 N.E. 2nd 463, 466.

V.

The situation is not altered by the fact that no indictment had been returned by the Criminal Court of Cook County against petitioner at the time he presented his petition to suppress as evidence the property illegally seized. The Constitutional prohibition against the use of articles illegally seized by an officer in any criminal proceeding prevents the use of such evidence as a basis for an indictment before a Grand Jury the same as the use of such property upon the trial of such indictment.

Go-Bart Importing Co. v. *United States,* 282 U. S. 344, 354, 355, 358, 366; 75 L. Ed. 374, 51 S. Ct. 153.

Perlman v. *United States,* 247 U. S. 7, 12-13; 62 L. Ed. 950; 38 S. Ct. 417.

U. S. v. *Butler,* 156 Fed. (2d) 897.

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In re Fried, 161 Fed. (2d) 453, 458.

Silverthorne Lumber Co. v. *U. S.,* 251 U. S. 385, 392; 40 S. Ct. 182; 64 L. Ed. 319.

People v. *Martin,* 382 Ill. 192, 200-201; 46 N.E. 2nd 997-1001.

ARGUMENT.

I.

Inasmuch as the Supreme Court of Illinois dismissed (Tr. 12-13), the appeal taken to said Court from the order in question of the Criminal Court of Cook County, Illinois (Tr. 10) and stated in a Memorandum Opinion filed in said Court that said order was not reviewable by the courts of review of the State of Illinois (Tr. 12-13), nothing was adjudicated by the Supreme Court of Illinois in this matter, except that said order was not a reviewable one. Therefore, the Criminal Court of Cook County Illinois is the highest court of the State of Illinois within the purview and meaning of sub-section three (3) of section 1257 of Title 28 of the United States Code Annotated, and this petition for a Writ of Certiorari is properly and necessarily directed to the Criminal Court of Cook County, Illinois. (Authorities Prop. I)

II. III.

The Supreme Court of Illinois has for nearly thirty (30) years not only construed section six (6) of Article Two (II) of the Constitution of Illinois as prohibiting the use as evidence in any criminal proceeding, of property seized by an officer of said State in violation of said constitutional provision, but has also repeatedly declared that section six (6) of Article Two (II) of the Constitution of Illinois was substantially identical with the Fourth Amendment of the Constitution of the United States and must be given the same construction that this Court has placed upon the Fourth Amendment and has repeatedly cited them together. In *People* v. *Martin*, 382 Ill. 192, 196; 46 N.E. 2nd

997-999, the Supreme Court of Illinois, speaking of section six (6) of Article Two (II) of the Constitution of that State, state:

> "The Fourth Amendment of the Constitution of the United States is substantially in the same language and the provisions of both State and Federal Constitutions have been construed to have the same effect."

The same ruling was made by the Supreme Court of Illinois in *People* v. *Schmoll,* 383 Ill. 280-283; 48 N.E. 2nd 933, 944; and in *People* v. *Grod,* 385 Ill. 584, 586; 588-589, 590-591; 53 N.E. 2nd 591, 593, 594, 595.

Moreover, the Legislature of Illinois in the year 1931, enacted a statute making it a crime punishable by fine and imprisonment for any "sheriff, coroner, constable, police officer or other officer of the law", to fail to "make disposition of any property illegally seized and held by the officer otherwise than by returning the property or by destroying it, or disposing of it according to the laws of the State of Illinois". (Section 456(a), Ch. 38, Ill. Rev. St. 1949 set forth in full in Prop. III)

This statute, apparently, has never been construed by any court of review of the State of Illinois, but it plainly prohibits the use of property illegally seized by an officer of the State of Illinois, in any criminal proceeding against the person from whom it was seized.

Thus the situation is one where a state has adopted a constitutional provision prohibiting officers of the state from seizing property in the manner disclosed in the petition filed by petitioner in the Criminal Court of Cook County, Illinois, the courts of last resort of that State for a period of nearly thirty years have uniformly construed such constitutional provision as prohibiting the use as evidence in any criminal proceeding of property seized in violation of said constitutional provision, and the Legisla-

tive Department of that State has made it a crime for an officer of the State to use property so seized in any criminal proceeding against the person from whom it was seized. (Authorities Prop. II, III.)

IV.

The right to the equal protection of the laws of a State within the meaning of section one (1) of the Fourteenth Amendment, is a guaranty that no state, whether by a judicial or executive officer, or by its legislature, may deprive any individual or any class, of rights that are accorded to others in a similar situation. And even if the law of a state, on its face, is in no way discriminatory, if an executive officer of a state enforces it, or a judicial officer of a state applies it in such a manner to any individual or any class as to show that he or the class was singled out for discriminatory, arbitrary and invidious treatment in a substantial way, that is a denial of the equal protection of the law. In *Hysler* v. *Florida,* 315 U. S. 411; 86 L. Ed. 932; 62 S. Ct. 688, this Court said "If Hysler had been singled out for invidious treatment by the Florida Supreme Court, he could properly complain here". (315 U. S. p. 422)

That cause was before this Court on a Writ of Certiorari to the Supreme Court of Florida to review the judgment of that Court, denying Hysler leave to file a petition for a Writ of Error *coram nobis.* It appears that the sole contention made by Hysler before this Court was, that the Supreme Court of Florida by denying him such leave deprived him of rights that had been accorded to others, as shown, as he contended, by decisions of that Court. A majority of this Court decided that it had not been shown by other decisions of the Supreme Court of Florida that it had granted leave to others to file such

petitions, in situations substantially similar to the facts disclosed in Hysler's petition.

In *Cochran* v. *Kansas,* 316 U. S. 255; 86 L. Ed. 1453; 62 S. Ct. 1068, this Court held that the act of a warden of a penitentiary in preventing a person incarcerated therein from taking a step necessary, under the laws of Kansas to perfect an appeal from the judgment of the Court by which he was sentenced to imprisonment, constituted a denial of the equal protection of the laws of Kansas when under the laws of that state he was entitled to an appeal from said judgment at the time he attempted to do so.

In *Yick Wo* v. *Hopkins,* 118 U. S. 356; 30 L. Ed. 220, 6 S. Ct. 1064, this Court said: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by a public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution". (118 U. S. 373-374)

In *Truax* v. *Corrigan,* 257 U. S. 312, 66 L. Ed. 254, 42 S. Ct. 124, this Court said: "The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and a hostile discrimination or the oppression of inequality on the other. It sought an equality of treatment of all persons, even though all enjoy the protection of due process." (257 U. S. 332-333)

In *Wolf* v. *Colorado,* 338 U. S. 25; 93 L. Ed. 1782; 69 S. Ct. 1359, the opinion of this Court discloses that the Supreme Court of Colorado had uniformly held that property illegally seized by an officer of that State was admissible as evidence in a criminal proceeding against the person from whom it was seized. In that cause, petitioner did not contend, and he could not properly have contended,

that he was denied an equal protection of the law by the courts of Colorado, in view of said prior decisions of the Supreme Court of that State. The petitioner Wolf in that cause, asserted that the admission in evidence in a case, in which he was the defendant, of property illegally seized from him by an officer of the State of Colorado was so contrary to the basic principles of natural justice and the spirit of the age, that it constituted depriving him of his property without due process of law in violation of the due process clause in the Fourteenth Amendment, this was asserted in the face of the established law of Colorado which law declares such illegally obtained evidence properly used in a criminal proceeding. Three of the justices of this Court in dissenting opinions, expressed their agreement with said contention of the petitioner Wolf in that cause.

This petitioner, therefore, respectfully submits that the discriminatory action of the Criminal Court of Cook County, Illinois, in denying him rights that had been accorded to others for nearly thirty years by the Supreme Court of Illinois was in reference to a right that was basic and fundamental; and that there is substance to his contention that he was denied the equal protection of the law. (Authorities Prop. IV.)

V.

The Supreme Court of Illinois has decided, not only that property illegally seized by an officer of that State may not be used as evidence upon the trial of the person from whom it was seized and taken, but that such evidence may not be used by the officers of that State for any purpose whatsoever. In *People* v. *Martin*, 382 Ill. 192, 200-201, 46 N.E. 2nd 997, 1001, the Supreme Court of Illinois held that officers of that State could not use property

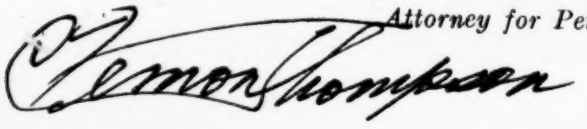
illegally seized for the purpose of obtaining the names and addresses of persons who could furnish evidence that a crime had been committed by the person from whom it was seized. In that cause, that Court, after stating that section six (6) of Article Two (II) of the Constitution of Illinois must be given the same construction that this Court had placed upon the Fourth Amendment to the Constitution of the United States, followed the decision of this Court in *Silverthorne Lumber Co.* v. *U. S.*, 251 U. S. 318, 64 L. Ed. 319; 40 S. Ct. 182, and stated: "However, it is equally clear that the essence of these constitutional provisions is not merely that the evidence so seized may not be used before the Court, but may not be used at all."

In this matter, the State's Attorney of Cook County is endeavoring to and intends to use evidence illegally seized from petitioner, for the purpose of obtaining an indictment against him when the highest tribunal of that State has declared that evidence so seized may not be used by officers of the State of Illinois for any purpose, either in court or out of court, and it necessarily follows that where the law of the forum prohibits the use as evidence, of property illegally seized, that the person from whom it is taken is entitled to prevent the use of such property before a Grand Jury for the purpose of obtaining an indictment against him. (Authorities cited in Prop V.)

It is respectfully submitted that the Writ of Certiorari should be granted, and that the order in question of the Criminal Court of Cook County, Illinois, be reversed.

Respectfully submitted,

George S. May, Petitioner.
by C. VERNON THOMPSON,
Attorney for Petitioner.



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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 547

GEORGE S. MAY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOHN S. BOYLE, State's Attorney,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS.

The respondent, John S. Boyle, State's Attorney, presents this statement in opposition to the petition for Writ of Certiorari to the Criminal Court of Cook County, Illinois.

Opinion Below.

The Order of the Criminal Court of Cook County, Illinois, denying the motion to suppress evidence is included in the printed transcript of the record (R. 9-10).

Jurisdiction.

The petitioner relies upon Subdivision 3 of Section 1257 of Title 28 Judiciary and Judicial Procedure to give jurisdction to the Supreme Court of the United States to review

the judgment of the Criminal Court of Cook County. In opposition thereto, we cite the Order of the Supreme Court of Illinois included in the printed transcript of record (R. 12-13), where the Court found "Appellant has attempted to appeal from the denial of a petition to suppress evidence claimed to have been unlawfully seized and to return the same to the appellant. The record does not disclose any case, civil or criminal, in which the motion would apply, and it is not a civil action for the recovery of the property seized or the value thereof. The legality of the trial courts' action can be determined in a civil action for the recovery of the property or in a criminal case if the property seized is attempted to be used therein. Our jurisdiction depends upon whether the case presented to us comes within those kinds designated by Section 75 of the Civil Practice Act. No such action is shown to be pending in the trial court from which an appeal or Writ of Error may be prosecuted. We, therefore, have no jurisdiction." This was not a final order reviewable by the court. We submit that the order entered by the Criminal Court of Cook County, State of Illinois, denying the motion to suppress evidence and issuance of subpoenas for certain persons to appear and give evidence before the Grand Jury is not a final appealable order reviewable by this Court within the purview of Subsection 3, Section 1257 of Title 28 of the United States Code annotated.

Question Presented.

Does the action of the State Court, namely the Criminal Court of Cook County, State of Illinois, in denying a motion by petitioner to suppress certain evidence to prevent same from being submitted to a Grand Jury in a criminal proceeding against a person who is one of five claiming joint custody and control of the evidence but does not claim ownership, constitute a denial of the equal protection of

the laws of the State of Illinois within the purview of Section One of the 14th Amendment to the Constitution of the United States?

Statement.

The petitioner, George S. May, President and Director of the Tam O' Shanter Country Club, a Corporation, was arrested at said Club for possessing and operating gambling devices at said Club, and the gambling paraphernalia, which was in open view, was seized. In the Criminal Court of Cook County, Illinois, May filed a petition to quash his subpoena ad testificandum issued for the appearance of certain named third persons at the instance of the Grand Jury and to suppress the issuance of Grand Jury subpoenas that have or may issue against all persons to appear and testify concerning gambling, and to suppress as evidence all reference to the possession, use, and operation of the machines and devices. The petitioner, George S. May, stated in his petition, which is included in the printed transcript of record (2-9), that he and five other persons, Directors of the Corporation, were in joint possession and custody of twenty-seven slot machines and six other articles used for gambling. The petition does not claim ownership on the part of May nor does it ask for the return of the articles seized. The prayer of the petition was denied and the petition was dismissed by the Criminal Court of Cook County, Illinois, after hearing and argument. Thereafter an appeal was perfected to the Supreme Court of Illinois on the ground that the petition and ruling therein were a deprivation of personal Constitutional Rights against unreasonable Search and Seizure and being compelled to give evidence against himself. The Supreme Court of Illinois dismissed the appeal on the ground that the record does not disclose any case, civil or criminal, in which the motion could apply * * * therefore (we) have no jurisdiction."

ARGUMENT.

I.

The petitioner has set forth under his "reasons relied upon for the allowance of Writ of Certiorari" a quotation of Rule 38, 5a of this Court without giving any facts in support thereof.

In I of petitioner's brief, it is stated that certiorari should issue to the Criminal Court of Cook County, Illinois, because the Supreme Court of Illinois refused to review the order of the Criminal Court of Cook County, Illinois. This is not a reason under rule 38, 5a of this Court because the order of the Criminal Court of Cook County, Illinois, did not decide a federal question of substance; and it was decided in accord with the decisions of this Court.

Constitutional privileges are purely personal to the individual and he cannot claim the privilege of another person, or of the corporation of which he is an officer. *Hale* v. *Henkel,* 201 U. S. 43, 26 S. Ct. 370.

The interpretation placed on a state statute by highest court of that state is binding on the Supreme Court of the United States. *Hanover Fire Ins. Co.* v. *Carr,* 272 U. S. 494; 47 S. Ct. 179. *Guaranty Trust Co. of N. Y.* v. *Blodgett,* 287 U. S. 509; 53 S. Ct. 244. *Hartford Accident & Indemnity Co. et al.* v. *N. O. Nelson Mfg. Co.,* 291 U. S. 352; 54 S. Ct. 392. *International Union* v. *Wisconsin Rel. Bd.,* 336 U. S. 245; 69 S. Ct. 516.

The Supreme Court will not review a state court decision resting on an adequate and independent non-federal ground, though the decision also rests upon an erroneous view of federal law. *Radio Station WOW* v. *Johnson,* 326 U. S. 120; 65 S. Ct. 1475.

Chapter 38, sec. 342 of the 1949 Ill. Revised Statutes provides:

> "Every slot machine is hereby declared a gambling device and shall be subject of seizure, confiscation and destruction by any * * * local authority within whose jurisdiction it may be found."

Chapter 38, sec. 343 of the 1949 Ill. Revised Statutes provides:

> "Every owner, occupant lessee, mortgagor or other person in possession of any premises upon which any gambling device may be located and every person in the use, operation, lease or other possession of the same, shall be fined for the first offense; fined and confined in the County Jail, for the second offense and for the third offense fined and imprisoned in the penitentiary."

In *Bobel* v. *The People,* 173 Ill. 19, the Supreme Court of Illinois said:

> "The legislature has the power to prohibit the mere keeping in possession of such gambling devices as well as to prohibit their use."

The meaning of a state statute and the extent to which it may be limited are questions on which the highest court of a state has the final word. *Musser* v. *State of Utah,* 333 U. S. 95; 68 S. Ct. 397; *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468; 57 S. Ct. 857.

II. & III.

In Points II and II of petitioner's brief he has cited the Illinois Constitution which is identical with the Fourth Amendment to the United States Constitution and invoked them both in his behalf, citing numerous cases which apply to the "unreasonable searches and seizures" of the papers

and effects of the people in their homes and houses; and also cites the statute 456-A of Chapter 38, Ill. Rev. Stat. 1949 providing for return of property to "its legal owner."

The petitioner cannot complain of seizure and use in evidence of property not belonging to him. *People* v. *De Marios,* 401 Ill. 146. *People* v. *Exum,* 382 Ill. 204. *People* v. *Patterson,* 354 Ill. 313. *People* v. *Reid,* 336 Ill. 421.

IV.

In Point IV of his brief, petitioner cites cases in support of his contention that he was denied rights accorded to other citizens of Illinois. Most of those cases involve questions of racial discrimination, which is not the question here. Also argued is the dissenting opinion in *Wolf* v. *Colorado.*

Durkin v. *Hey,* 376 Ill. 292 deals with property belonging to the appellants and a violation of the due process clauses of both State and Federal constitution. No such question is raised here.

V.

In the argument for petitioner under this point the cases cited are again cases where the property belonged to the petitioners or defendants in the case, and they requested its suppression and *return* to its legal owner. Petitioner cites the case of *People* v. *Martin,* 382 Ill. 192, which applied to property belonging to the defendant, who asked for its return. That this is different from the present case may be seen by reading *People* v. *Exum,* 382 Ill. 204, previously referred to.

Conclusion.

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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